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**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF THE REQUEST FOR  
ADMINISTRATION IN WATER DISTRICT  
120 AND THE REQUEST FOR DELIVERY  
OF WATER TO SENIOR SURFACE  
WATER RIGHTS BY A & B IRRIGATION  
DISTRICT, AMERICAN FALLS  
RESERVOIR DISTRICT #2, BURLEY  
IRRIGATION DISTRICT, MILNER  
IRRIGATION DISTRICT, MINIDOKA  
IRRIGATION DISTRICT, NORTH SIDE  
CANAL COMPANY, and TWIN FALLS  
CANAL COMPANY

**IGWA's STATEMENT FOR JUNE 15, 2005  
STATUS CONFERENCE**

Idaho Ground Water Appropriators, Inc. ("IGWA"), through its counsel, Givens Pursley LLP, and on behalf of its ground water district members, Aberdeen-American Falls Ground Water District, Magic Valley Ground Water District, Bingham Ground Water District, North Snake Ground Water District, Bonneville-Jefferson Ground Water District, Southwest Irrigation District, and Madison Ground Water District (the "Ground Water Districts"), submits this statement in response to the June 3, 2005 *Notice of Status and Scheduling Conference* ("June 3 Notice") issued by the Director, Idaho Department of Water Resources ("Director" and "Department").

## SUMMARY

Four principal matters are pending before the Department pertaining to the Surface Water Coalition's Delivery Call against ground water rights in Water District 120 (the "Delivery Call"). These matters, and IGWA's summary comments about them, are:

1) The petitions from all sides seeking reconsideration of the Director's May 2, 2005 Amended Order on the Delivery Call ("May 2 Order"). The May 2 Order and the petitions seeking reconsideration and hearing are the central procedural matters facing the parties. They present a number of elemental legal and factual issues concerning how conjunctive management is to be properly implemented in Idaho. In IGWA's view, this action—which IGWA refers to here as the "Delivery Call Hearing"—should involve discovery, motion practice, and a hearing schedule designed to permit a final decision by the end of this year.

2) IGWA's Initial Plan for Providing Replacement Water ("Replacement Water Plan"). The Replacement Water Plan, which IGWA filed in response to the May 2 Order, which is an interim or temporary response compelled by the May 2 Order, will be relevant in the Delivery Call Hearing.<sup>1</sup> Due to significant increases in the water supply available in the American Falls Reach over the last two months, IGWA is filing a motion simultaneously herewith seeking a supplemental order reducing the May 2 Order's replacement water requirements for 2005. Such a supplemental order would allow IGWA to understand how much of its replacement water portfolio the Director now believes to be necessary to meet these interim requirements in 2005, pending the outcome of the Delivery Call hearing, and how much might be available for replacement or mitigation elsewhere, or for other purposes.

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<sup>1</sup> Other ground water-dependent entities also submitted plans for providing replacement water in response to the May 2 Order, and these too will be relevant in the Delivery Call Hearing.

3) The seven Ground Water Districts' February 8, 2005 Mitigation Plan for the American Falls Reach of the Snake River ("IGWA's Mitigation Plan").<sup>2</sup> IGWA's Mitigation Plan involves the same issues of law and fact as those to be considered in the Delivery Call Hearing, these matters should be consolidated. IGWA is filing such a motion simultaneously herewith.

4) The May 12, 2005 Request for Approval of Mitigation Plan of A & B Irrigation District ("A&B's Mitigation Plan"). A&B Irrigation District ("A&B") HAS filed A&B's Mitigation Plan in response to the Delivery Call. Although A&B also is one of the parties that filed the Delivery Call, the May 2 Order recognizes that the Delivery Call seeks curtailment of some of A&B's own ground water pumpers. A&B's Mitigation Plan, which seeks both to support the Delivery Call and to remove A&B's pumpers from its effects, also should be consolidated with the closely related matters at issue in the Delivery Call Hearing.

#### **RESPONSE TO SPECIFIC REQUESTS IN JUNE 3 NOTICE**

##### **1. The issues IGWA anticipates raising at the hearing.**

IGWA anticipates raising several factual and legal issues, including, without limitation:

- Whether any member of the Surface Water Coalition ("SWC"), or its water users, has suffered material injury due to out of priority ground water pumping.
- How the ESPA Ground Water Model should be used and interpreted in the context of the Delivery Call.
- The reasonableness of diversion and beneficial use of waters diverted by or for the SWC and its respective water users.

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<sup>2</sup> The seven existing Ground Water Districts ("GWDs") submitted this mitigation plan on behalf of their respective members. However, because the five GWDs affected by the Delivery Call are represented by IGWA, references to IGWA here also are intended as a shorthand reference to those GWDs who filed the Mitigation Plan.



- Whether the Director properly calculated or considered the SWC's use of natural flow or surface water storage in evaluating material injury.
- Whether the Director erred by ordering curtailment of ground water rights without first implementing the procedures, or applying the standards, set forth in Idaho's ground water law, such as I.C. § 42-237.
- Whether the Director complied with I.C. § 42-226, the Idaho Constitution, and other provisions of law pertaining to the requirements of maximum use, optimum use, and full economic development of the State's water resources.
- Whether the Director appropriately ordered curtailment of, or replacement water from, holders of ground water rights without first implementing the procedures, or applying the standards, set forth in Idaho's ground water law, such as I.C. § 42-237.
- Whether, in this case, Idaho Code § 42-601 et seq. authorizes the Director to issue a curtailment order against ground water rights without first holding an evidentiary hearing.
- Whether the Director has properly applied the Conjunctive Management Rules in determining injury and in imposing curtailment or replacement water requirements.
- Whether the Director's calculations of water supply, effects of pumping, and material injury for 2005 remain valid in light of the precipitation received in the April-June period.
- Whether the mitigation plans or replacement water plans are adequate to remove or compensate for any material injury that might exist.

IGWA reserves the right to raise additional issues as further facts are developed or in response raised by others.

**2. Proposed prehearing schedule**

IGWA proposes the following schedule:

September 21, 2005: last day to file pre-hearing motions.

October 14: all witnesses identified; all exhibits exchanged.

October 21: discovery completed.

October 25: final prehearing conference.

**3. Hearing dates and estimated length.**

IGWA estimates a four-week hearing, and proposes that it take place during November 2005.

**4. Address the potential for consolidation of representation at the hearing.**

IGWA's Ground Water District members are not the only ground water users facing potential curtailment or mitigation obligations. Simplot, United Dairymen of Idaho, the City of Pocatello, the State Agency Ground Water Users, and ground water users in A&B Irrigation District also are affected by the Delivery Call and the May 2 Order. IGWA expects that these ground water users may be able to cooperate or consolidate representation to a significant degree. However, these parties have not yet discussed this.

**5. Avoiding cumulative evidence.**

To help eliminate cumulative evidence, IGWA recommends that the parties be required to submit, within a reasonable time before the hearing, pre-filed written testimony of major witnesses, particularly experts. IGWA also suggests that all parties who are similarly situated, or


whose legal positions are substantially aligned, be encouraged to collaborate on or jointly offer witnesses, evidence, and motions.

**6. Such other matters as will expedite the disposition of the case.**

The Delivery Call Hearing proposed here will bring together all claims advancing the Delivery Call and all responses and defenses to it. These defenses include, among others, all mitigation and replacement water plans. Because these plans, and the facts supporting them, will be central to the evidence presented in the Delivery Call Hearing, they should be consolidated with the Delivery Call and be considered in the hearing. IGWA has filed a motion to consolidate and establish a joint hearing on the Delivery Call, IGWA's Mitigation Plan, and A&B's Mitigation Plan.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of June 2005.

GIVENS PURSLEY LLP

  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of June 2005, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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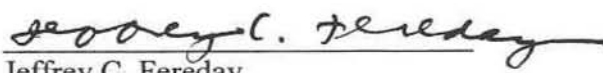
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